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No. 84-1258

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CHEMICAL BANK and WASHINGTON PUBLIC POWER SUPPLY SYSTEM,

Petitioners,

v.

PUBLIC UTILITY DISTRICT NO. 1 OF BENTON COUNTY, WASHINGTON, *et al.*,

Respondents.

BRIEF OF RESPONDENT, INLAND POWER & LIGHT CO. IN OPPOSITION TO PETITION FOR CERTIORARI

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March 26, 1985.

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QUESTIONS PRESENTED

1. Does the decision of the Washington State Supreme Court invalidating the Participants' Agreements of the respondents violate the contract clause of the United States Constitution, Article I, Section 10, Clause 1?

2. Does the above decision of the Washington State Supreme Court work a "taking" of private property for public use without just compensation in violation of the Fifth Amendment and the Fourteenth Amendment to the United States Constitution?

3. Does the above decision of the Washington State Supreme Court amount to the State of Washington's depriving any citizen of property without due process of law in violation of the Fourteenth Amendment of the United States Constitution?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings set forth at pages iii-v of the Petition for Certiorari correctly identify the parties to this litigation.

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I.

OPINIONS BELOW

The petition for Certiorari, pages 1 and 2, properly sets forth the opinions below.

II.

JURISDICTION

Respondent, Inland Power & Light Co., urges that the petitioner, Chemical Bank, has failed to show any United States Constitutional grounds for this Court's jurisdiction either upon the contract clause, the taking clause, or the due process of law provision.

III.

STATEMENT OF THE CASE

This respondent, Inland Power & Light Co., adopts the statement of the case set forth in the brief of respondent, Washington Public Utilities Group, dated March 5, 1985. In addition to that statement, it is to be noted that the August 1983 judgment of the trial court, The Superior Court for the State of Washington, not only released the Public Utility Districts and the Cities involved with the Supply System, but also granted the motions for summary judgment on behalf of the other Participants and released them of liability under the Participants' Agreements on the basis of, among other things, mutual mistake and commercial frustration. Petitioner's second appeal to the Washington State Supreme Court followed and on November 6, 1984 the Supreme Court of the State of Washington rendered its opinion affirming the judgment of August 1983, and rèaffirmed its decision of June 1983. Its mandate was thereafter issued December 17, 1984.

IV.

REASONS FOR DENYING THE WRIT

The Washington State Supreme Court opinions should be accorded finality.

The Supreme Court of the State of Washington has twice adjudged that under the statutes and case law of the State of Washington the municipal participants (PUDs and Cities) did not have authority to enter into the Participants' Agreements; that their signing same was substantively ultra vires.

Respondent, Inland Power & Light Co., is not a municipal body; it is a cooperative corporation, incorporated under the Laws of the State of Washington. It and other respondent cooperatives were relieved of liability under the Participants' Agreements on the basis of commercial frustration and impossibility and of mutual mistake. It and the other parties, including the Washington Public Power Supply System, mistakenly assumed that the municipal parties did have authority to execute the Participants' Agreements. The State Court also, after careful analysis, ruled that the various equitable arguments of petitioner are not to be applied in this situation. *(Chemical Bank v. Washington Public Power Supply System* (Chemical Bank I) 99 Wn (2d) 772; 666 P (2d) 329 (1983); *Chemical Bank v. Washington Public Power Supply System* (Chemical Bank II) 102 Wn (2d) 874 (Nov. 1984).

The decisions by the Washington State Supreme Court carefully enunciate the law of the State of Washington.

A. The contract clause of the Constitution of the United States has no application to a state's judicial determination, and petitioner seems to have abandoned its contention in this regard.

B. The taking clause is not applicable here. Inland Power & Light Co. did not contract with the petitioner, Chemical Bank, nor with the bondholders. The Participants' Agreements are agreements with Washington Public Power Supply System. The bonds are not obligations of the participants. The bonds are obligations of the Supply System. The money advanced by the bond-

holders was advanced to the Supply System; not to the participants. The Washington courts have not ruled that the bonds are invalid. The Washington courts have ruled that the Participants' Agreements are unenforceable. The net effect is, of course, that the bonds are uncollectible but the fact is that none of the participants have taken anything from petitioner or from the bondholders. The bondholders still have their bonds. The bonds turned out to be uncollectible. The bondholders made a poor investment.

C. There is no lack of due process under the Fourteenth Amendment. The following quotation from *Howard v. Kentucky*, 200 U.S. 164 (1906) is appropriate:

> "He seems to make an issue with the court of appeals of the state upon the law of the state, and to contend that the court erred in the interpretation and application of that law. This contention encounters the ruling *In Re Converse*, 137 U.S. 624, 631, 34 L. Ed. 796, 799, 11 Sup. Ct. Rep. 191, and other cases, which hold that a 'state cannot be deemed guilty of a violation of its obligations under the Constitution of the United States because of a decision, even if erroneous, of its highest court, while acting within its jurisdiction'.
>
> "We cannot assume error in the decision of the court of appeals. We accept it, as we are bound to do, as a correct exposition of the law of the state, common, statutory, and constitutional. Our inquiry can only be, Did the state law, as applied, afford plaintiff in error due process, as those words are used in the 14th Amendment?"

The petitioner, Chemical Bank. opted to frame its lawsuit as one asking for a declaratory judgment in May 1982. Petitioner, Chemical Bank, chose the forum: The Courts of the State of Washington. The many issues

presented were, on many occasions, argued in the Superior Court of the State of Washington in Seattle; and on two occasions the Supreme Court of the State of Washington very carefully reviewed the procedures and issues. The parties involved have had repeated and full hearings and consideration of their positions. It is submitted that there was no lack of "due process of law" in the history of this case.

V.

CONCLUSION

Despite the magnitude of the default involved, there is no Federal question presented. The opinions of the Washington State Supreme Court should be recognized as conclusive and petitioner's application for certiorari should be denied.

Respectfully submitted this 26th day of March, 1985.

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